

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

ORIGINAL

RECEIVED

JUN 09 1999

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Tipton, Oklahoma)

)  
)  
)  
)

MM Docket No. 99-23  
RM - 9423

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

DOCKET FILE COPY ORIGINAL

**OPPOSITION TO "ESSENTIAL SUPPLEMENTAL COMMENTS  
OF TEXAS GRACE COMMUNICATIONS"**

Undersigned counsel, on his own behalf, hereby submits the attached Declaration as his Opposition to the "Essential Supplemental Comments of Texas Grace Communications" filed on May 26, 1999, in the above captioned proceeding. The attached Declaration affirms and certifies that undersigned counsel had no prior knowledge of and no connection with the original petition for a new FM channel allotment at Tipton, Oklahoma filed by Good Government Radio. The comments of Texas Grace Communications are baseless, speculative and scurrilous and contain absolutely no truth as to any involvement of undersigned counsel with the petitioner Good Government Radio.

Respectfully submitted,



Mark N. Lipp  
Shook, Hardy & Bacon, LLP  
600 14th Street, NW  
Suite 900  
Washington, DC 20005  
(202) 783-8400

No. of Copies rec'd  
List A B C D E

014

### **DECLARATION**

I, Mark N. Lipp, attorney for WBAP/KSCS Operating, Ltd. and Blue Bonnet Radio, Inc. ("WBAP/BBRI") in this proceeding hereby states the following under penalty of perjury:

### **TEXAS GRACE'S ALLEGATIONS**

The Comments of Texas Grace Communications ("Texas Grace") assert that I participated in an alleged abusive petition filed by Good Government Radio for the allotment of Channel 249C2 at Tipton, Oklahoma. Texas Grace refers to a post office box of Good Government Radio that was opened by Paul Reynolds, WBAP/BBRI's consulting engineer. Texas Grace assumes that I had some knowledge of this post office box and of the Tipton filing simply because other clients that I have represented also used Paul Reynolds as their consulting engineer. Texas Grace describes these activities as having been performed in order to serve "a joint vested interest of Lipp and Reynolds." Texas Grace argues that because I did not certify that I represent the Tipton petitioner, that I have participated in a sham filing and an abuse of process.

Texas Grace points to my involvement on behalf of Station KLAK in 1996 in a request that the Olney, Texas (now Archer City) channel be changed in order to assist another client in a different matter with a proposal that has not been filed with the Commission and which Texas Grace assumes is a "Dallas-Ft. Worth area move-in." Texas Grace attaches a letter that I wrote in 1996 concerning the negotiations.

Texas Grace notes that I recently contacted its counsel in April, 1999 with regard to the KLAK proposal. Texas Grace complains that it waited three weeks to receive a proposal which it expected would resolve its conflict with the Tipton petition but the proposal was not received.

Texas Grace states that in the scope of my representing WBAP/BBRI, Channel 276A was selected as a substitute channel at Vernon, Texas in order to preclude using Channel 275C2 at Tipton. Furthermore, it asserts the Reply Comments filed by WBAP/BBRI went beyond simply pointing out that Channel 275C2 could not be used as an alternative at Tipton and discussed the acceptability of the application site for Archer City.

### **MY RESPONSE**

There is absolutely no truth to the allegations of Texas Grace accusing me of any involvement in wrongdoing. I do not represent Good Government Radio. I have never knowingly spoken to anyone who has an interest in Good Government Radio. I had no knowledge of the filing of the petition by Good Government Radio for a new FM channel at Tipton and certainly did not participate in the preparation of that filing. I have no knowledge of Good Government Radio or its President, Elinor Nelson nor to my knowledge have I ever spoken to or had any contact with any member of Good Government Radio. I qualify my statement as “to my knowledge” because I do not even know who the members of Good Government Radio are.

Basically I am being charged with “guilt by association” with Paul Reynolds. Texas Grace offers some factual information alleging an involvement by Paul Reynolds in the Tipton filing. But none of that information pertains to me. I have no ongoing working arrangement with Paul Reynolds or his firm, Reynolds Technical Associates. I represent numerous broadcast clients throughout the country and work with many other consulting engineers. I am sure that Mr. Reynolds has many clients who are represented by other legal counsel as well. I was hired by WBAP/BBRI to advise on a particular rule making project. Mr. Reynolds had separately been hired by WBAP/BBRI. Having said that, I have indeed worked with Mr. Reynolds in a few rule making

proceedings because we share a few mutual clients. There is nothing unusual about the same lawyer and engineer being retained to work on a few projects without establishing an ongoing relationship. I am not aware of Mr. Reynolds' activities on behalf of his clients if I do not represent them. Similarly, Mr. Reynolds is not privy to information about my firm's clients which are not represented by his firm. Accordingly, I absolutely deny having had any knowledge of, or participation in, any of the activities of which Texas Grace accuses me in connection with Good Government Radio. These charges against me are based on nothing more than guesswork, suspicion and guilt by association. I feel defamed by these unfounded charges that I had some participation in a sham filing. I demand that Texas Grace either retract its charges against me or the Commission initiate sanctions against Mr. Dave Garey, proprietor of Texas Grace Communications.


As to Texas Grace's other charges against me, I did not select Channel 276A for Vernon, Texas and did not know that this proposal would preclude the availability of an alternative channel for Tipton. I was told that Channel 276A was selected because it was the only channel that could be substituted at Vernon without a change in site. Texas Grace suggests that because the WBAP/BBRI comments went beyond pointing out that there was a conflict with Vernon, Texas by stating that the proposed Archer City site does not provide 70 dBu coverage to the entire community, that I must have had a hidden agenda. The fact is that the WBAP/BBRI proposal has not been accepted by the Commission for public comment. Therefore, my client decided that as a precaution, it should point out any defects that may exist in the Archer City proposal so that if WBAP/BBRI's proposal needed to be amended in order to become acceptable, it could do so. Such an approach is not unusual for an attorney who is doing his job. To do otherwise when a defect may exist could mean the difference between an acceptable and an unacceptable proposal.

As an entirely separate matter, I did represent Station KLAK, Durrant, Oklahoma in an attempt to upgrade the station in 1996. During the course of that representation, I recall having had only one conversation with Mr. Garey and wrote only one letter which was attached to the Texas Grace pleading. There was nothing improper with the statements contained in the letter nor in my discussion with Mr. Garey. I was simply asking him whether he had an interest in changing the Olney channel and pointed out that although the coverage area would decrease, there would be no significant impact on the population to be served. I inquired as to Mr. Garey's plans for his station so that my client could determine whether any such changes could be accommodated within the overall plan being formulated. On behalf of my client, I offered to reimburse Texas Grace for the costs of changing channels which would include compensation for the lesser value of a lower class channel. Mr. Garey said no and to my recollection, the matter was dropped. The fact that no proposal was filed to change the Olney channel demonstrates that neither I nor my client had any desire to force or coerce Texas Grace to change its channel without its consent. Indeed, I have no means at my disposal to coerce or pressure Mr. Garey into consenting when he did not want to consent.

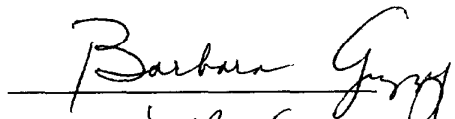
Mr. Garey was not contacted further until earlier this year after the rule making to move to Archer City was granted. During this new effort, I had no direct contact with Mr. Garey, my only involvement was to contact John Trent, as Mr. Garey states, to discuss a very unpleasant telephone call that Paul Reynolds received from Mr. Garey. I was told by Paul Reynolds that Mr. Garey made threats directed to Paul Reynolds and to myself and stated that he would "destroy us" if we did not have the Tipton proposal withdrawn. John Trent suggested that if I had a proposal for Mr. Garey to consider that we put it in writing as opposed to making any further contact by telephone.

Although I agreed that any further contact should be in writing, I was not aware that there was any time limit and I was informed that Mr. Garey did not want us to send him a further proposal. There was certainly no conscious effort on my part to delay Mr. Garey from making any filings.

I have been involved in numerous rule making proceedings during my years of private practice and engaged in many channel change negotiations. My approach is one of accommodation and conciliation. I have never engaged in anything resembling the kind of coercive tactics of which I have been accused. Nor have I ever engaged in a sham filing as Mr. Garey suggests. I am shocked and dismayed that Mr. Garey would irresponsibly make false accusations without any basis for doing so and try to damage my reputation.

  
Mark N. Lipp

Sworn and Subscribed Before Me on this 9<sup>th</sup> day of June, 1999.

  
Notary Public w.c.

My Commission Expires May 10, <sup>2003</sup>~~1999~~

**CERTIFICATE OF SERVICE**

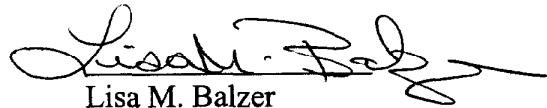
I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 9th day of June, 1999 caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**OPPOSITION TO ESSENTIAL SUPPLEMENTAL COMMENTS OF TEXAS GRACE COMMUNICATIONS**" to the following:

\* Ms. Leslie Shapiro  
Federal Communications Commission  
Allocations Branch  
445 12th Street, SW  
Room 3-A360  
Washington, DC 20554

Mr. Dave Garey  
Texas Grace Communications  
20 Samlaw Drive  
Monsey, NY 10952

John Trent, Esq.  
Putbrese Hunsaker & Trent, P.C.  
100 Carpenter Drive  
Suite 100  
Sterling, VA 20167-0217

Elinor Nelson  
Good Government Radio  
P.O. Box 478  
Gonzales, FL 32560

  
Lisa M. Balzer

**\* HAND DELIVERED**